

AUTHORIZING THE SECRETARY OF THE INTERIOR TO EX-
CHANGE CERTAIN FEDERAL MINING RIGHTS FOR CER-
TAIN LANDS IN NEW MEXICO

SEPTEMBER 30 (legislative day, SEPTEMBER 26), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany S. 2264]

The Committee on Energy and Natural Resources to which was referred the bill (S. 2264), to authorize the Secretary of the Interior to exchange certain Federal mining rights for certain lands in New Mexico, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. The Secretary of the Interior is authorized to exchange certain lands as identified for disposal in the Southern Rio Grande Plan Amendment for certain mining claims on lands withdrawn for the National Aeronautic and Space Administration and New Mexico A & M College (now New Mexico State University) under P.L.O. 3685 and P.L.O. 2051. Once the United States determines the claims are valid under existing law, the exchange authorized by the preceding sentence shall be made on an equal value basis as determined by an independent appraisal.

SEC. 2. (a) The Secretary of the Interior is authorized and directed to make available for exchange the Federal interests in the lands described in subsection (b) for the private interests in the lands described in subsection (c). The exchange shall be made in a manner consistent with applicable provisions of law and shall be on the basis of equal value as provided in section 206 of the Federal Land Management Act of 1976 (43 U.S.C. 1716).

(b) The Federal interests to be made available for exchange under this section are those lands in section 14, 22, 23, 26, and 35 of T 23 S, R 2 E, New Mexico Principal Meridian which are encompassed by P.L.O. 2051.

(c) The private interests to be exchanged pursuant to this section are those lands owned by New Mexico State University in sections 19, 29, 30, and 31 of T 22 S, R 4 E, and section 6 of T 23 S, R 4 E, New Mexico Principal Meridian. The exchange

may be made regardless of the reverter provision contained in the patent of those lands to the Regents of the Agricultural College of New Mexico and shall not be deemed to constitute the basis for reversion.

(d) Lands not acquired by New Mexico State University pursuant to this section and which are encompassed by P.L.O. 2051 may be disposed of, when available for disposition, by sale to or exchange with the State of New Mexico, New Mexico State University, or other public entities in accordance with the Recreation and Public Purposes Act (43 U.S.C. 869 et seq.): *Provided, however, That New Mexico State University is given a right of first refusal on any proposed disposition.*

(e) None of the lands transferred to New Mexico State University pursuant to this section shall be sold by New Mexico State University. All such lands shall be used for the purposes of promoting directly or indirectly educational, scientific, and research activities, including those activities currently authorized under P.L.O. 2051, or promoting the utilization of the natural geothermal resources located within the boundaries of the lands transferred. In the event that the lands transferred to New Mexico State University pursuant to this section are used for any purpose other than those for which conveyance is authorized by this subsection, title to that portion of the lands upon which there is an unauthorized use shall immediately revert to the United States without the necessity for further action to accomplish the reversion of title to the United States.

(f) Notwithstanding any other provision of law or court order, the Secretary of the Interior, if the Secretary determines it is necessary and appropriate for the purpose of consummating a conveyance of lands or interests therein under this act, is hereby authorized and directed to revoke P.L.O. 2051 or any portion thereof necessary to consummate the transaction authorized by this Act.

PURPOSE OF THE MEASURE

The purpose of S. 2264, as ordered reported, is to authorize the Secretary of the Interior to exchange certain public lands for certain mining claims in New Mexico and to authorize the Secretary to exchange other federal lands for lands owned by their New Mexico State University.

BACKGROUND AND NEED

The public lands covered by S. 2264 are located on what is known as "A" mountain in an urban expansion area of Las Cruces, New Mexico. Public Land Orders 2051 and 3685, which encompass approximately 4,182 acres, withdrew these public lands from appropriation, including the mining laws, in support of NASA communication antenna site facilities and New Mexico State University research. These facilities are cooperatively used by NASA and New Mexico State University for Federal programs. Sensitive electronic equipment, a part of NASA's program, and the University's Satellite tracking observatory, are installed at this facility. Heavy equipment, associated with two sand and gravel mining operations, interferes with and disrupts the electronic equipment.

Exchange of public lands for valid unpatented mining claims would benefit these important Federal programs. Additionally, the exchange and sale authorized by enactment of section 2, would transfer the withdrawn lands to the University in exchange for University land within the Organ Mountains Recreation Area. This Recreation Area is identified in BLM plans as having wilderness or national conservation area potential.

Disposal of the public lands encompassed by S. 2264 is consistent with BLM's approved Southern Rio Grande Plan Amendment.

LEGISLATIVE HISTORY

S. 2264 was introduced by Senators Domenici and Bingaman on April 11, 1988. A hearing was held by the Subcommittee on Public Lands, National Parks and Forests on May 20, 1988.

At the business meeting on Thursday, September 22, 1988, the Senate Committee on Energy and Natural Resources ordered S. 2264, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 22, 1988, by unanimous voice vote of a quorum present, recommends that the Senate pass S. 2264 if amended, as described herein.

COMMITTEE AMENDMENT

During the consideration of S. 2264, the Committee adopted an amendment in the nature of a substitute. The substitute incorporates numerous technical amendments recommended by the Department of the Interior at the Subcommittee's hearing on this measure as well as several substantive changes. These differences are discussed in the Section-by-Section Analysis portion of this report.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes the Secretary of the Interior to exchange certain lands identified for disposal in the Southern Rio Grande Plan Amendment for certain valid mining claims located on lands withdrawn for New Mexico State University (the University) and the National Aeronautic and Space Administration (NASA).

Section 2, subsections (a), (b), and (c), authorize the Secretary to exchange certain described federal lands on "A" Mountain for lands owned by New Mexico State University within the Organ Mountains Recreation Area. The substitute added a provision ensuring that such an exchange be carried out in accordance with the applicable provisions of the Federal Land Policy and Management Act of 1976. The substitute also includes a provision recognizing a reverter contained in the patent to the lands being exchanged by the University and authorizing the exchange notwithstanding such a reverter.

Subsection (d) gives the University a right of first refusal to acquire the remaining lands covered by P.L.O. 2051 when, and if, the Secretary makes such lands available for disposal pursuant to the Recreation and Public Purposes Act.

Subsection (e), which was not included in the bill as introduced, places certain limitations on the lands transferred to the University by this section. Such lands cannot be sold and must be used for educational, scientific, and research activities, or promoting the utilization of natural geothermal resources. If the University violates any of these conditions, the title to such lands will revert to the United States.

Subsection (f) provides that the exchanges and transfers authorized by this Act are to be undertaken without regard to the injunc-

tion in effect as a result of the *National Wildlife Federation v. Burford* lawsuit.

NASA Lands

As introduced, S.2264 authorized the transfer of certain lands currently withdrawn for NASA for a communication antenna site. This authority has been deleted from the bill as reported by the Committee.

Religious Activities on "A" Mountain

Since the 1800's, members of the Pueblo of Guadalupe have conducted an annual pilgrimage from the Pueblo to sites on "A" Mountain where they conduct religious activities, including the worship of Our Lady of Guadalupe. New Mexico State University has entered into a written agreement with La Corporacion de Los Indigenes de Nuestra Senora de Guadalupe that guarantees to members of the Pueblo of Guadalupe access to the religious sites through the year 2084. The Committee does not intend the transfer of land under this Act to impair the rights of members of the Pueblo of Guadalupe to obtain access to the religious sites on "A" Mountain under the existing agreement.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1988.

Hon. J. BENNETT JOHNSTON, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2264, a bill to authorize the Secretary of the Interior to exchange certain federal mining rights for certain lands in New Mexico. The bill was ordered reported by the Senate Committee on Energy and Natural Resources on September 22, 1988.

S. 2264 would authorize the Secretary of the Interior to exchange certain mining claims on federal land for other federal land of equal value in the State of New Mexico. The bill would also authorize the exchange of federal land for land currently owned by New Mexico State University (NMSU). Any land authorized for exchange but not acquired by NMSU would be available for acquisition by other interests subject to the right of first refusal by NMSU. Any land acquired by NMSU would be restricted in its use and any violation of these restrictions would result in reversion of the lands to the federal government.

Based on information from the Bureau of Land Management, enactment of S. 2264 would result in additional costs to the federal government totaling approximately \$150,000 over the next two years. These costs would be incurred primarily for validity examinations on the mining claims and various administrative activities.

We do not expect enactment of S. 2264 to result in additional costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Theresa Gullo, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM, *Acting Director.*

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2264. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2264, as reported.

EXECUTIVE COMMUNICATIONS

On May 3, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2264. These reports had not been received at the time the report on S. 2264 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF JAMES M. PARKER, ASSISTANT DIRECTOR, SUPPORT SERVICES, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

I appreciate the opportunity to appear before the Subcommittee today to discuss the views of the Department of the Interior on S. 2264.

Section 1 would authorize the Secretary of the Interior to exchange certain public lands for certain mining claims located on public lands which are withdrawn for programs of the National Aeronautics and Space Administration (NASA) and New Mexico State University. Upon determining the mining claims are valid, the exchange would be made on an equal value basis, determined by an independent appraiser.

Section 2 would authorize and direct the Secretary of the Interior to make Federal interests in lands, described in section 2(b), available for exchange. Section 2(c) describes New Mexico State University lands that are to be exchanged under this section.

Section 2(d) would provide that those public lands described in section 2(b), which were withdrawn by Public Land Orders 3685 and 2051, that are not acquired by New Mexico State University pursuant to this section, may be disposed of by sale to, or exchange with, the State of New Mexico, New Mexico State University, or other public or private entities. However, New Mexico State University would be given a right of first refusal on any proposed dis-

position. Further, this section would require NASA and BLM to immediately begin negotiations to review Public Land Order 3685 and identify lands in excess of the withdrawal needs.

Section 2(e) would authorize and direct the Secretary of the Interior to revoke Public Land Order 2051 if the Secretary determines revocation to be necessary and appropriate to consummate an exchange under this bill.

The public lands covered by S. 2264 are located on what is known as "A" mountain in an urban expansion area of Las Cruces, New Mexico. Public Land Orders 2051 and 3685, which encompass approximately 4,182 acres, withdrew these public lands from appropriation, including the mining laws, in support of NASA communication antenna site facilities and New Mexico State University research. These facilities are cooperatively used by NASA and New Mexico State University for Federal programs. Sensitive electronic equipment, a part of NASA's program, and the University's Satellite tracking observatory, are installed at this facility. Heavy equipment, associated with two sand and gravel mining operations, interferes with and disrupts the electronic equipment.

Exchange of public lands for valid unpatented mining claims would benefit these important Federal programs. Additionally, the exchange and sale authorized by enactment of section 2, would transfer the withdrawn lands to the University in exchange for University land within the Organ Mountains Recreation Area. This Recreation Area is identified in BLM plans as having wilderness or national conservation area potential.

Disposal of the public lands encompassed by S. 2264 is consistent with BLM's approved Southern Rio Grande Plan Amendment.

We would support enactment of this bill if amended as we suggest, because it insures the integrity of valuable Federal programs and research conducted by NASA and the University.

We recommend these amendments:

First, the University acquired the lands identified in section 2(c) by a patent that contains a provision for reversion of title to the United States if the University alienates the land. We recommend section 2(c) be amended to include a provision that recognizes the reverter and authorizes conveyance of the land notwithstanding the reverter provision. Further, the bill should direct that these lands shall be appraised as if they were not subject to the reversionary clause.

Second, we recommend that section 2(a) be amended to provide that the exchange be on the basis of equal value as provided in section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Third, we recommend that section 2(b) be amended to provide that the land transferred to New Mexico State University continue to be used for research purposes in connection with Federal programs, and that title revert to the United States should such use cease.

Fourth, section 2(e) should be amended to include authority to also revoke Public Land Order 3685 and to authorize revocation of both Public Land Orders in part as well as in whole.

Finally, 2(e) should be amended to authorize the revocation in order to enable the sale as well as the exchange of lands pursuant

to this bill. As section 2(e) is currently written, revocation of the Public Land Orders is authorized only for the purpose of exchange.

It is not clear whether this bill is intended to exclude from the injunction in the National Wildlife Federation lawsuit the exchange and sale transactions and the revocation of withdrawals that it authorizes. If that is intended, we suggest that the bill state that more specifically.

We will be happy to work with the Committee to develop appropriate language for the recommended amendments.

This completes my statement. I will be pleased to answer any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 2264, as reported.

